FILE COPY

Office Supreme Court
FILED
MAY 16 193
CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1931.

No. 881

THE ALTON RAILROAD COMPANY, A CORPORATION,
Appellant,

vs.

THE UNITED STATES OF AMERICA, ET AL.,
Appellees.

MOTION BY APPELLANT TO ADVANCE.

SILAS H. STRAWN,
FRANK H. TOWNER,
Solicitors for Appellant.

GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1931.

No. .....

THE ALTON RAILROAD COMPANY, A CORPORATION,
Appellant,

vs.

THE UNITED STATES OF AMERICA, ET AL.,
Appellees.

MOTION BY APPELLANT TO ADVANCE.

MAY IT PLEASE THE COURT:

Now comes appellant in the above entitled cause and moves that said cause be advanced for early hearing, and in support of its motion makes the following statement of the matter involved and of the reasons supporting the motion.

The question involved in the case is the validity of part of an order entered by the Interstate Commerce Commission in a proceeding before it and designated as its Docket No. 22487, *William W. Wheelock and William G. Bierd, as Receivers, etc., of The Chicago and Alton Railroad Company* v. *Akron, Canton & Youngstown Railway Company, et al.* The complainants in the case

before the Commission were the predecessors in interest of appellant, which, prior to the institution of this suit in the District Court succeeded to the rights of those complainants, being the assignee of the purchaser at judicial sale of all the railways and properties of The Chicago and Alton Railroad Company.

The complaint of the predecessors of appellant in the proceeding before the Commission (Appendix A to petition, Rec. 3) was that the existing divisions of certain joint through rates were unreasonable and otherwise unlawful. The joint through rates in question had been published for many years by agreement between the predecessors of appellant and the eastern carriers which were defendants before the Commission, and are now published by agreement between appellant and the same eastern carriers. They applied and now apply on traffic moving from Peoria and/or Pekin, Illinois, to destinations in Eastern Trunk Line territory. Under them, appellant hauls the traffic to Dwight, Joliet or Chicago, Illinois, and there delivers it to the eastern carriers for transportation to destination.

Most of the traffic moving on these rates moves into Peoria or Pekin from points west thereof. If it is reshipped under the joint rates from Peoria or Pekin to the east within 12 months after its delivery at either point, the applicable rates are called "reshipping" or "proportional" rates and vary in amount, depending upon the territory from which the shipment to Peoria to Pekin was made. If not reshipped within 12 months, the applicable rates are called "local" rates. Both kinds of rates are joint rates, and differ only in amount. On July 1, 1928, the eastern lines, without the consent of the predecessors of appellant and without any order of any commission or other body having jurisdiction, changed the divisions of the joint rates from Peoria and

Pekin, reducing the proportions allowed to the predecessors of appellant to nothing in many cases and to a maximum of 2 cents per hundred pounds in other cases. The complaint was then filed with the Commission.

The final order of the Commission in the case, made on December 7, 1931 (Appendix C to petition, Rec. 3), found that the existing divisions of the "reshipping" rates, and which had been attacked in the complaint, had not been shown to be unjust, unreasonable or otherwise unlawful. Four of the Commissioners dissented from this conclusion.

Appellant then brought this suit under the provisions of the Urgent Deficiencies Act of October 22, 1913 (38 Stat. L. 219-220, U. S. C. A., Title 28, Sections 41 *et seq.*) to enjoin, set aside, annul and suspend so much of the order of the Commission as approved and authorized the application of said divisions in the future. Thirty eastern railroads who joined in the publication of the joint rates in issue were also named as defendants and an injunction was also asked restraining them from enforcing and applying said divisions against appellant.

In its petition filed in the lower court it was alleged that the order made by the Commission, in so far as it approved and authorized said divisions, was unreasonable, arbitrary, unlawful and void; that it operated to permit and authorize a confiscation of appellant's property, in violation of its rights under the Fifth Amendment to the Constitution of the United States; that there was no evidence in the record of the proceedings before the Commision which justified the conclusion reached by it; that in so far as the order approved and authorized the application of those divisions, it should be enjoined, annulled, vacated and set aside; and that the defendant railroads should be enjoined from applying and enforcing those divisions against appellant. The order of

December 7, 1931, is attached to said petition as Appendix C (Rec. 3). The District Court entered a decree on April 22, 1931 (Rec. 164) dismissing the petition on the ground that the order of the Commission, in so far as it was attacked, was negative in form and in substance, and that the court was without jurisdiction to issue the injunction prayed for. Appellant has taken this appeal from that decree to this court. The cause was docketed in this court on May 16, 1932, and the jurisdictional statement for appellant was filed on the same date. The record in this court has not yet been printed and all page references are to the pages of the original record.

The reasons why said cause should be advanced for hearing are as follows:

The Urgent Deficiencies Act of October 22, 1913 (38 Stat. L., 219-220) provides that the final judgment or decree of the District Court in such a case as this may be reviewed by this court upon appeal, and that appeals in such cases shall have priority in hearing and determination in this court over all other causes except criminal causes.

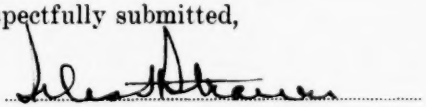
The approval by a majority of the Commission of those divisions of the "reshipping" rates which had been established by the eastern carriers on July 1, 1928, permits and authorizes those carriers, appellees herein, to apply those divisions in the future. They are now being applied and enforced by those carriers against appellant in the division of all revenue accruing on traffic moving under the "reshipping" rates. Appellant is compelled to handle traffic under those rates so long as they are in effect, and is continually handling it. The application by the eastern carriers, appellees herein, of the divisions established by them on July 1, 1928, and approved and authorized by the Commission in its order of December 7, 1931, therefore results in appellant being

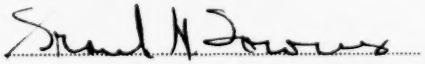
compelled to continually handle traffic either for no compensation whatever, or for a compensation which does not in any case pay the cost of appellant's operation.

The only manner in which appellant can avoid this continual loss is by canceling the joint rates in issue and retiring from the business. Such action would, however, require the approval of the Commission which might not be granted. Moreover, appellant desires to continue to handle the traffic under a fair division of the rates applicable thereto, and denies in this suit the right of the Commission to compel it to retire from the traffic under the record made before the Commission.

WHEREFORE, appellant moves that said cause be set down for argument at as early a date as is practicable.

Respectfully submitted,





Solicitors for Appellant.